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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,998	07/28/2003	Tracee Eidenschink	S63.2-10692	7353
490 7590 01/29/2007 VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			EXAMINER WILLIAMS, CATHERINE SERKE	
			ART UNIT 3763	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
2 MONTHS		01/29/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/628,998
Filing Date: July 28, 2003
Appellant(s): EIDENSCHINK, TRACEE

Jennifer L. Buss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/30/06 appealing from the Office action mailed 5/31/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 7/31/06 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

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(6) Grounds of Rejection to be Reviewed on Appeal

NEW GROUND(S) OF REJECTION

Claims 1-8,12-13,17-18,20-21, 24-25 and 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danforth (USPN 4,822,345) in view of Samuelson et al (USPN 6,464,683).

(7) Claims Appendix

A substantially correct copy of appealed claims appears on page 13 of the Appendix to the appellant's brief. The minor errors are as follows: claim 1 was amended in the After-Final amendment dated 7/31/06, which has been entered. The amendment corrects line 5 of claim 1 changing "a lumen wall" to --the lumen wall--.

(8) Evidence Relied Upon

4,822,345	Danforth	4-1989
6,464,682	Samuelson et al.	10-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8,12-13,17-18,20-21, 24-25 and 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danforth (USPN 4,822,345). Danforth discloses a catheter (20), an inner shaft (53), a lumen wall (55) and an outer shaft (42) and a heat transmitting mechanism (lumen 54 or 56). The lumen wall (55) as shown in figure 9B is positioned between the inner and outer shaft. The assembly also has a balloon (28). It is considered inherent that any portion of the external surface of any balloon defines a stent mounting region. See 6:53-66.

Danforth meets the claim limitations as described above but fails to include an inner shaft having three layers.

Samuelson et al (USPN 6,464,683) teaches a catheter with an inner shaft having three layers for improved advancement of a separate smaller catheter through the lumen. See 6:25-28.

At the time of the invention, it would have been obvious by one skilled in the art to incorporate the three layer coating construction of Samuelson into the invention of Danforth. Both devices are analogous in the art; therefore, a combination is proper. Additionally, the

motivation for making the combination comes from both Danforth and Samuelson. Danforth teaches introducing a catheter through inner lumen 47 and Samuelson teaches a mechanism (layered coating) for enhancing the advancement of the catheter. The motivation would have been in order to enhance the advancement of the angioplasty catheter of Danforth.

(10) Response to Argument

Appellant argues that Danforth does not teach or suggest at least one heat transmitting mechanism comprising at least one fluid transmission lumen defined by a lumen wall positioned between the inner shaft and the outer shaft. See page 10 line 7 of Appeal Brief. Appellant further states that "...neither lumen 54 nor lumen 56 has at least one fluid transmission lumen defined by a lumen wall positioned between the outer shaft 42 and the inner shaft 53".

Danforth teaches fluid transmission lumen defined by a lumen wall positioned between the inner shaft and the outer shaft. Additionally, the present claim language is broad and the prior art meets the instant claims.

As stated above, the fluid transmission lumen (54 or 56) is defined in part by lumen wall (55). As shown in figure 9B, the fluid transmission lumen is positioned between inner shaft (53) and outer shaft (42).

As to appellant's statement that neither lumen 54 nor lumen 56 has at least one fluid transmission lumen, lumen 54 or lumen 56 is the fluid transmission lumen itself. The claims do not recite limitations that place a lumen defined by a lumen wall within another lumen. Clearly, the present claim language is broad and Danforth meets the broad claim limitations.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:


(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

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Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,



Catherine S. Williams

CATHERINE S. WILLIAMS
PRIMARY EXAMINER

January 18, 2007

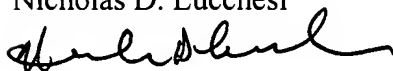
A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

Frederick R. Schmidt


FREDERICK R. SCHMIDT
DIRECTOR
TECHNOLOGY CENTER 3700

Conferees:

Nicholas D. Lucchesi



Angela D. Sykes

